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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-203034

**DATE:** December 29, 1981

**MATTER OF:** Farm Credit district retirement plans

**DIGEST:** Since Farm Credit district retirement plans must be submitted for prior approval of Farm Credit Administration, FCA employees cannot thereafter be viewed as independent for purposes of performing audits required by section 103 of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

This decision responds to a letter from the General Counsel of the Farm Credit Administration concerning the independence of the Farm Credit Administration's (FCA) audit of Farm Credit district retirement plans. The General Counsel contends that the examination and audit of a plan by the Chief Examiner of the FCA satisfies the requirement of an independent audit imposed by section 103 of the Employee Retirement Income Security Act of 1974, (ERISA), as amended, 29 U.S.C. § 1021. We disagree. Since district retirement plans must be submitted for the prior approval of the FCA, we do not believe FCA employees can thereafter be viewed as "independent" for purposes of performing the audit.

Section 121(a) of the Accounting and Auditing Act of 1950 (1950 Act), as amended, 31 U.S.C. § 68a (Supp. III, 1979), provides in relevant part that:

"(a) Notwithstanding any other provision of law or any administrative determination to the contrary, each Federal Government pension plan and each plan described in section 123(b) \* \* \*, shall be deemed to be subject to the provisions of section 103 of the Employee Retirement Income Security Act of 1974 in the same manner as an employee pension benefit plan to which such section applies \* \* \*."

Farm Credit District Retirement plans are specifically listed in section 123(b). (31 U.S.C. § 68c(b)(4).)

Section 103(a)(3)(A) of ERISA, as amended, 29 U.S.C. § 1023(a)(3)(A), requires that:

"Except as provided in subparagraph (C), the administrator of an employee benefit plan shall

engage, on behalf of all plan participants, an independent qualified public accountant, who shall conduct such an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant. \* \* \* (Emphasis supplied.)

The General Counsel argues that an examination and audit (with opinion) of a district retirement plan by the Farm Credit Administration's Chief Examiner constitutes the independent audit required by section 103 of ERISA, as amended, 29 U.S.C. § 1023. He cites as support for this position, section 5.20 of the Farm Credit Act of 1971, as amended, 12 U.S.C. § 2254, which provides:

"Except as provided herein, each institution of the System, and each of their agents, at such times as the Governor of the Farm Credit Administration may determine, shall be examined and audited by farm credit examiners under the direction of an independent chief Farm Credit Administration examiner, but each bank and each production credit association shall be examined and audited not less frequently than once each year. Such examinations shall include objective appraisals of the effectiveness of management and application of policies in carrying out the provisions of this Act and in servicing all eligible borrowers. If the Governor determines it to be necessary or appropriate, the required examinations and audits may be made by independent certified public accountants, certified by a regulatory authority of a State, and in accordance with generally accepted auditing standards. Upon request of the Governor or any bank of the System, farm credit examiners shall also make examinations and written reports of the condition of any organization, other than national banks, to which, or with which, any institution of the System contemplates making a loan or discounting paper of such organization. For the purposes of this Act, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under

the National Bank Act, the Federal Reserve Act, the Federal Deposit Insurance Act, and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law."  
(FCA emphasis.)

He asserts that "[a]s an 'agent' of a Farm Credit institution, a pension trust covering the employees of that institution is subject to a mandatory examination and audit by FCA which Congress contemplated would be independent."

We agree that Congress intended that the Farm Credit Administration's Chief Examiner and his subordinates would be independent of the banks and associations which they examine. 12 C.F.R. 601.130 in fact requires that Farm Credit examiners:

"\* \* \* refrain from action or conduct which may result in, or create the appearance of, obligating them to or causing them to be influenced by any of the officers or employees of the institutions supervised by the Farm Credit Administration." (Emphasis supplied.)

However, we are concerned not merely with the independence of Farm Credit examiners vis-a-vis the institutions which they audit. We are concerned in addition with the independence of the FCA with regard to the district retirement plans. 12 C.F.R. 612.2310 provides that:

"The district boards and the bank boards shall provide retirement benefits for their employees who are not under the Civil Service Retirement Act.  
\* \* \* Any such retirement plans, including thrift or savings plans, and any amendments thereto, shall be submitted for the prior approval of the Farm Credit Administration. \* \* \*"

Since this regulation contemplates that the FCA will participate in the formulation of district retirement plans, we believe that the subsequent examination of these plans by FCA personnel does not constitute an "independent" audit.

We note that GAO's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (1981 Revision)" (Standards), in dealing with the question of independence, sets as the second general standard for Government auditing the following:

"In all matters relating to the audit work, the audit organization and the individual auditors, whether government or public, must be free from personal or

external impairments to independence, must be organizationally independent, and shall maintain an independent attitude and appearance." See Standards, p. 6.

This standard places upon auditors and audit organizations the responsibility for maintaining independence so that opinions will be impartial and will be viewed as impartial by knowledgeable third parties. Standards, p. 17-18. Among personal and organizational impairments, which in our opinion might affect auditors' ability to be impartial or be viewed by knowledgeable third parties as impartial, are:

"Previous involvement in a decisionmaking or management capacity that would affect current operations of the entity or program being audited."  
See Standards, p. 18.

Additionally, we note that the second general standard of the American Institute of Certified Public Accountants (AICPA) provides:

"In all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor or auditors." AU § 220.01.

The AICPA has interpreted this standard by stating, in part:

" \* \* \* Independent auditors should not only be independent in fact; they should avoid situations that may lead outsiders to doubt their independence.

" \* \* \* Public confidence \* \* \* might \* \* \* be impaired by the existence of circumstances which reasonable people might believe likely to influence independence. \* \* \* [T]o be recognized as independent, he [the independent auditor] must be free from any obligation to or interest in the client, its management, or its owners. \* \* \*"

Thus, if we apply these standards, we note that the FCA may be viewed by knowledgeable third parties or reasonable people as having an "obligation to," as well as an "interest in," the Farm Credit district retirement plans in that FCA is charged by law with approving the plans. In addition, FCA has supervisory control over all member bank activities, particularly with respect to certain personnel-related activities. Consequently, FCA examiners may lack the appearance of independence on the bases that they may not be viewed as free from the personal impairment mentioned in the GAO standards or as in compliance with the AICPA interpretations of its second general standard.

Furthermore, the FCA examiners may appear to knowledgeable third parties or reasonable people not to be free of FCA administrative control. If so, there may be further appearance of lack of independence by FCA examiners.

While we recognize that neither of these standards specifically applies to the audits of Farm Credit Banks and institutions, our Office's standards have been generally accepted by all levels of Government as well as by the accounting profession. Furthermore, the AICPA standards and pronouncements which for the most part technically apply only to AICPA members engaged in the practice of accounting have also been generally accepted by the accounting profession and others as authoritative support for auditing matters and as guidance where other guidance does not exist.

In the present case there is nothing in the law or its legislative history indicating what constitutes an "independent audit" for the purposes of section 103(a)(3)(A) of ERISA, although it does indicate that audit by an independent qualified public accountant was anticipated. See section 121(a)(6) of the 1950 Act, as amended, 31 U.S.C. § 68a(a)(6). In these circumstances, then, we think it is appropriate to refer to the standards laid down by GAC and AICPA in order to assist us in determining whether or not the Farm Credit Administration audit meets the requirement for "independence" under the law.

Therefore, since an audit of the Farm Credit District Retirement Plan by employees of the same authority responsible for approving the plan, notwithstanding the organizational "independence" of FCA's examiners, may lead reasonable persons to doubt the independence of the examination performed, it is our opinion that the requirement for an independent audit would not be satisfied by this procedure. Instead, we believe that engaging a private firm to conduct the audit (as contemplated by the Act) would be necessary to satisfy this requirement.

*Liberty R. Van Cleave*

For the Comptroller General  
of the United States